



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

APR 06 2006

CERTIFIED MAIL 7004 1160 0004 3168 6111
RETURN RECEIPT REQUESTED

In Reply: AIR-5
Refer To: Docket No. R9-06-05

Mr. David Tsang
CEO-President
Evergreen Pulp, Inc.
One TCF Drive
Samoa, CA 95564

Re: Evergreen Pulp, Inc.
Samoa, California

Dear Mr. Tsang:

Enclosed is a Finding of Violation ("FOV") issued by the United States Environmental Protection Agency ("EPA") to Evergreen Pulp, Inc. ("Evergreen"), concerning the operation of its kraft pulp mill in Samoa, California ("the facility"). This FOV has been issued to notify you that EPA finds that Evergreen's facility is in violation of the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills, 40 C.F.R. Part 63, Subpart MM, §§63.860-63.868 40 C.F.R. 63.

If you wish to discuss the FOV, you may request a conference with EPA. The conference would afford Evergreen Pulp, Inc. an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Please contact Kara Christenson, Office of Regional Counsel, at (415) 972-3881, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 working days after receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Jordan for AD".

Deborah Jordan
Director, Air Division

Enclosures

cc: Mr. Lawrence Odle, APCO, NCUAQMD
Mr. James Ryden, Chief, Enforcement Division, CARB
Marc A. Zeppetello, Esq.
David D. Cooke, Esq.

In the Matter of:

Docket No. R9-06-05

Finding and Notice of Violation

Proceeding Under Section 113(a),
Clean Air Act, As Amended

¹ Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify a person in violation of a state implementation plan. This FOV alleges violations of section 112 of the Act; therefore, it is not a statutorily-required prerequisite to enforcement. We are issuing this FOV to provide the source with notice of EPA's findings.

2. On July 16, 1992, EPA published a list of source categories that would be regulated under section 112(c). That list included the pulp and paper production source category. 57 Fed. Reg. 31576.
3. On January 12, 2001, EPA published the final MACT standard for HAPs for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills, 40 C.F.R. Part 63, Subpart MM, §§63.860-63.868. 66 Fed. Reg. 3179.
4. In relevant part, 40 C.F.R. §63.860 states that the requirements of Subpart MM apply to the owner and operator of each kraft pulp mill that is a major source of HAP emissions. Section 63.860 also states that affected facilities include each existing chemical recovery system, as defined in 63.861 at a kraft pulp mill.
5. In relevant part, 40 C.F.R. §63.861 defines a "chemical recovery system" as all recovery furnaces, smelt dissolving tanks, and lime kilns at a kraft pulp mill, and that each existing recovery furnace, smelt dissolving tank, or lime kiln is considered a process unit within a chemical recovery system.
6. 40 C.F.R. §63.863 requires the owner or operator of an existing affected source or process unit to comply with the requirements in Subpart MM by no later than March 13, 2004.

SPECIFIC REGULATORY REQUIREMENTS

7. Initial Notification of Compliance: 40 C.F.R. §§63.9(b)(2) and 63.867(a)(1) require the owner or operator of an affected source or process unit to submit notifications of applicability to EPA within 120 days of the effective date of a relevant standard, such as Subpart MM. Section 63.9(b)(2) specifies the

information that must be contained in such a notice, including, but not limited to, "the source's compliance date."

8. Performance Testing:

- a. Notification of Performance Testing: 40 C.F.R. §§63.7(b) and 63.9(e) require the owner or operator of an affected source or process unit to notify EPA at least 60 calendar days before the test is scheduled to begin. The purpose of this notification is to allow the Administrator the opportunity to review and approve the site-specific test plan required under section 63.7(c) and to have an observer present during the test.
- b. Requirement to Conduct Performance Testing and Determine Operating Ranges: 40 C.F.R. §§63.7(a) and 63.865 require the owner or operator of an affected source to conduct performance testing within 180 days of the compliance date of the relevant standard. During such testing, 40 C.F.R. §63.864(j)(1) requires the owner or operator to establish operating ranges for the monitoring parameters specified in 40 C.F.R. §6.864(e)(10).
- c. Reporting of Test Results: 40 C.F.R. §63.7(g)(1) requires the owner or operator of an affected source to report performance test results to the Administrator before the close of business on the 60th day following the completion of the performance test.

9. Startup, Shutdown, Malfunction ("SSM") Plan : 40 C.F.R. §§63.6(e)(3) and 63.866(a) require the owner or operator of an affected source to develop a written plan that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction, and

a program of corrective action for malfunctioning process and control systems used to comply with the standards. Section 63.6(e)(3)(i) specifies that the plan must be developed by the compliance date for the relevant standard. Section 63.866(a)(1) requires the SSM plan to contain procedures for addressing exceedances of operating parameters established pursuant to Subpart MM. Section 63.866(a)(2) further requires the SSM plan to contain a maintenance schedule for each control technique and an inspection schedule for each continuous monitoring system required by Subpart MM.

10. Alternative Monitoring: 40 C.F.R. §63.864(e)(14) requires the owner or operator of each affected source that uses an air pollution control system other than an ESP, wet scrubber, RTO, or fabric filter to provide to the Administrator an alternative monitoring request that includes a description of the control device, test results verifying the performance of the control device, the appropriate operating parameters that will be monitored, and the frequency of measuring and recording to establish continuous compliance with the standards.² The alternative monitoring request is subject to the Administrator's approval.

11. Recordkeeping:

- a. Records of corrective actions and violations: 40 C.F.R. §63.866(b) requires the owner or operator of an affected source to maintain records of any occurrence when corrective action is required under §63.864(k)(1) and when a violation is noted under §63.864(k)(2).

² Although section 63.864(14) also specifies that an alternative monitoring request must include a site-specific monitoring plan as described in 40 C.F.R. §63.864(a), this element is not currently required as that provision has been removed and reserved. 68 Fed. Reg. 42605 (July 18, 2003).

- b. Records of parameter monitoring data: 40 C.F.R. §§63.10(c) and 63.866(c)(3) require the owner and operator of an affected source “to maintain records of parameter monitoring data required under 63.864, including any period when the operating parameter levels were inconsistent with the levels established during the initial performance test, with a brief explanation of the cause of the deviation, the time the deviations occurred, the time corrective action was initiated and completed, and the corrective action taken.”
 - c. Record retention requirements: 40 C.F.R. §§ 63.10(b)(1) requires the owner or operator of an affected source to maintain files of all required information to be recorded in a form suitable and readily available for expeditious inspection and review and to retain such files for at least five years. 40 C.F.R. §63.864(e)(10) specifies the types of records that must be maintained for smelt dissolving tanks and lime kilns that rely on the use of wet scrubbers to control particulate matter emissions. Specifically, section 63.864(e)(10) requires recording of pressure drop across the scrubber and scrubbing liquid flow at least once every successive 15-minute period.
12. Reporting: 40 C.F.R. §§63.10(e)(3) and 63.867(c) require the owner or operator of an affected source to submit quarterly excess emission and continuous monitoring system (“CMS”) reports to the Administrator if measured parameters meet any of the conditions in section 63.864(k)(2). Alternatively, if no excess emissions have occurred, 40 C.F.R. §63.867(c)(1) requires the owner or operator

to submit a semiannual report stating that no excess emissions occurred during the reporting period.

13. Emission standards:

- a. Numerical limits: 40 C.F.R. §63.862(a)(1) requires the owner or operator of an existing kraft pulp mill to comply with the following particulate matter emissions standards:
 - i. Smelt dissolving tanks: 0.20 pounds per ton of black liquor solids fired;
 - ii. Lime Kilns: 0.064 gr/dscf corrected to 10 percent oxygen.
- b. Determination of compliance through performance testing: 40 C.F.R. §§63.6(f)(2)(i) and (f)(3) provide that EPA will make findings of compliance with emission standards based on results of performance tests.
- c. Determination of compliance through parameter monitoring and emission standards: 40 C.F.R. §§63.864(k)(2) and (k)(2)(ii) state that a smelt dissolver tank equipped with a wet scrubber is in violation of the emission standard of §63.862(a)(1) if the monitoring exceedances occur when six or more 3-hour average parameter values within any 6-month reporting period are outside the range of values established in 40 C.F.R. §63.864(j). 40 C.F.R. §§63.864(k)(3) states that no more than one exceedance will be attributed in any given 24-hour period.

GENERAL ALLEGATIONS

14. Evergreen Pulp, Inc. is the current owner and operator of the Facility. Evergreen acquired the Facility on or about January 21, 2005 and has operated the Facility

since February 25, 2005. Evergreen commenced pulp production on March 8, 2005.

15. The Facility is a major source of toxic air pollutants, having emissions greater than 10 tons per year of any single hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.
16. The Facility is subject to 40 C.F.R. Part 63, Subparts A and MM, §§63.1-63.15 and 63.860-63.868.
17. The Facility includes the following combustion sources, all of which are subject to regulation as existing sources under 40 C.F.R. Part 63, Subparts A and MM:
 - (i) a recovery furnace, constructed in approximately 1990 and controlled by an ESP;
 - (ii) a smelt dissolving tank, constructed in approximately 1990 and, and controlled by a packed bed wet scrubber (installed in approximately 1990) and a spray curtain (installed in September 2005); and
 - (iii) a lime kiln, constructed in approximately 1965 and controlled by a venturi scrubber also constructed in approximately 1965.
18. As set forth in 40 C.F.R. §63.863(a), the compliance date for existing sources subject to the requirements of Subpart MM is March 13, 2004: "The owner or operator of an existing affected source or process unit must comply with the requirements in this subpart no later than March 13, 2004."
19. On November 17, 2005, EPA issued a request for information to Evergreen pursuant to section 114 of the Clean Air Act. Evergreen's responses to EPA's section 114 letter were dated December 21, 2005 and January 6, 2006.

FINDINGS WITH RESPECT TO REGULATORY REQUIREMENTS

20. Initial Notification of Compliance (40 C.F.R. §§63.9(b)(2) and 63.687(a)(1)) :

- a. Failure to submit: Prior to issuing its section 114 letter, EPA conducted a thorough search of its files related to MACT implementation and of correspondence records maintained by the Office of the Regional Administrator in an attempt to locate any notification submitted by Evergreen or previous owners of the Facility. EPA was unable to find any such letter. EPA's section 114 letter, therefore, requested Evergreen to provide a copy of any notifications prepared by Evergreen pursuant to §63.867(a)(1) and proof of receipt by EPA. Evergreen submitted a copy of a letter dated May 4, 2005 addressed to North Coast Unified AQMD and to EPA's regional office in San Francisco and indicating transmission by certified mail. Evergreen's response to EPA's section 114 letter did not include proof of receipt by EPA, such as certified mail receipt. Based on its own search and efforts to locate the letter and Evergreen's inability to provide a certified mail receipt, EPA has concluded that no such letter was received by EPA.
- b. Even if submitted, such letter was deficient: As set forth above, 40 C.F.R. §63.9(b)(2) specifies that the owner or operator of an affected source must include in the notification "the source's compliance date." The May 4, 2005 letter provided by Evergreen in its response to EPA's section 114 letter does not include this information. For this reason, EPA has

concluded that even if any such letter was actually submitted to EPA, the letter was deficient because it lacked this information.

21. Performance Testing

- a. Failure to notify EPA of performance testing (40 C.F.R. §§63.7(b) and 63.9(e)):
 - i. Recovery boiler: Evergreen conducted testing of the recovery boiler during the week of August 15, 2005. Evergreen did not provide record of notification to EPA of this test.
 - ii. Smelt dissolving tank: Evergreen's response to EPA's section 114 letter stated that it conducted testing of the smelt dissolving tank on September 15, 2005 and October 19-20, 2005. Evergreen could provide no record of notification to EPA of these tests.
 - iii. Lime kiln: Evergreen's response to EPA's section 114 letter stated that it conducted testing of the lime kiln on March 29-30, 2005 and August 18, 2005. Evergreen could provide no record of notification to EPA of these tests.
- b. Failure to timely conduct performance testing and determine parameter operating ranges (40 C.F.R. §§63.7(a), 63.865, and 63.864(j)): The compliance deadline for Subpart MM was March 13, 2004. The Facility was required to have completed its performance testing, and to have determined parameter operating ranges for the smelt dissolving tank and the lime kiln, within 180 days of this date, or approximately September 13, 2004.

- i. Recovery Boiler: Performance testing was not completed until August 17, 2005.
 - ii. Smelt dissolving tank: Performance testing and determinations were not completed until October 20, 2005.
 - iii. Lime kiln: Performance testing and determinations were not completed until August 18, 2005.
- c. Failure to submit reports of performance testing to EPA (40 C.F.R. §63.7(g)(1)): Reports were due to EPA within 60 days of completion of testing. Evergreen failed to meet this deadline with respect to the following:
- i. Smelt dissolving tank testing on March 30-April 2, 2005;
 - ii. Lime kiln testing on March 29-30, 2005 and August 18, 2005; and
 - iii. Recovery boiler testing on August 17, 2005.
22. Failure to Develop and Implement a Written SSM Plan (40 C.F.R. §§63.6(e)(3) and 63.866(a)): The Facility was required to have developed a SSM plan by the compliance deadline for Subpart MM, March 13, 2004. In response to EPA's request for such a plan, Evergreen provided the Facility's SSM plan dated November 1998, which appears to have been prepared to address 40 C.F.R. Part 63, Subpart S requirements. This plan does not meet the requirements for Subpart MM because it does not adequately address startup, shutdown or malfunction conditions for the affected sources subject to Subpart MM, namely, the recovery furnace, the smelt dissolving tank, and the lime kiln. Moreover, the plan does not contain procedures for addressing exceedances of operating parameters

established pursuant to Subpart MM or maintenance and inspection schedules for equipment regulated by Subpart MM.

23. Failure to Submit Alternative Monitoring Request for Smelt Dissolving Tank to EPA for Approval (40 C.F.R. §63.864(14)): In September 2005, Evergreen installed a spray curtain at the inlet to the scrubber for the smelt dissolving tank scrubber. Testing conducted in September and October 2005 indicate that the smelt dissolving tank can comply with the emission standard set forth in 40 C.F.R. §63.862(a)(1) only if parameter operating ranges for the scrubber and spray curtain are maintained. Evergreen's response to EPA's section 114 letter states that its November 21, 2005 submittal addressed monitoring not specifically required by 40 C.F.R. §63.864. This submittal is inadequate with respect to the spray curtain because it does not support 135 gallons per minute as the minimum flow. Source testing conducted by Evergreen indicated compliance at a minimum flow rate of 147 gallons per minute. In addition, the submittal does not adequately justify the frequency of preventative maintenance to address nozzle clogging. Such procedures are critical because they are a substitute for flow monitoring on each lance.

24. Failure to Maintain Records as Required:

- a. Failure to maintain records of corrective actions and violations for the smelt dissolving tank and lime kiln (40 C.F.R. §866(b)): Evergreen's response to EPA's section 114 letter states that data to identify the need for corrective actions did not exist until November 21, 2005; therefore, Evergreen did not maintain the required records until that date.

- b. Failure to maintain records of parameter monitoring data for the smelt dissolving tank and lime kiln (40 C.F.R. §§63.10(c) and 63.866(c)(3)): Evergreen's response to EPA's section 114 letter states that parameter monitoring data did not exist until November 21, 2005; therefore, Evergreen did not maintain required records of parameters until that date.
- c. Failure to maintain adequate records of parameter monitoring data (40 C.F.R. §§63.10(c) and 63.866(c)(3)): Records provided by Evergreen to EPA in its response to EPA's section 114 letter show that between November 21 and December 6, 2005, the 3-hour average smelt dissolving tank scrubber recirculation flow rates were below the established ranges. These records also show that on December 6 and 7, the 3-hour average smelt dissolving tank scrubber recirculation flow rates were not measured. The records in Evergreen's response to EPA's section 114 letter are incomplete for these occurrences because they do not adequately address the cause of these deviations, the time the deviations occurred, the time corrective action was initiated and completed, and the corrective action taken.
- d. Failure to retain required records for five years (40 C.F.R. §§63.10(b)(1), 63.864(e)(10)): Evergreen's response to EPA's section 114 letter and Evergreen's November 21, 2005 submittal to EPA indicate that Evergreen retains 3-hour averages of pressure and flow data, but does not retain data recorded on a more frequent basis (such as the specified minimum frequency of 15 minutes intervals) for any longer than 30 days.

25. Failure to Submit Required Reports to EPA (40 C.F.R. §§63.10(e)(3) and

63.867(c)): Evergreen was required to submit quarterly excess emission and CMS performance reports to EPA, or if no excess emissions occurred during the reporting period, a semiannual report stating that no excess emissions occurred during the reporting period. These reports were due 30 days after the end of the calendar half or quarter; therefore, Evergreen should have submitted to EPA quarterly reports on or before April 30, 2005; July 30, 2005; October 30, 2005 and January 30, 2006, or, alternatively, semiannual reports on July 30, 2005 and January 30, 2006. Evergreen's response to EPA's section 114 letter states that it has not submitted quarterly or semi-annual reports to EPA.

26. Failure to Comply with Emission Standard for Smelt Dissolving Tanks (40 C.F.R.

§63.862(a)(1)): Evergreen is required to comply with a particulate matter emissions standard for smelt dissolving tanks of 0.20 pounds per ton of black liquor solids fired.

- a. Exceedances between March 8, 2005 and September 15, 2005: In November and December 2004, the Facility's previous owner conducted performance testing. The results of each test showed that emissions from the smelt dissolving tank were 0.41 pounds per ton of black liquor solids fired. Evergreen acquired the Facility on or about January 21, 2005, commenced operation on February 25, 2005, and commenced pulp production on or about March 8, 2005. Between March 30 and April 2, 2005, Evergreen conducted additional performance testing of the smelt dissolving tank. The results of this testing showed that emissions from the

smelt dissolving tank were 0.42 pounds per ton of black liquor solids fired. In September 2005, Evergreen installed a spray curtain at the inlet to the scrubber for the smelt dissolving tank scrubber. Testing conducted in September and October 2005 indicate that the smelt dissolving tank can comply with the emission standard set forth in 63.862(a)(1) if parameter operating ranges for the scrubber and spray curtain are maintained.

- b. Exceedances between November 21 and December 7, 2005: 40 C.F.R. §63.864(k)(2) states that a smelt dissolving tank equipped with a wet scrubber is in violation of the emission standard set forth in section 63.862(a)(1) if there are six or more 3-hour average parameter values outside the established range of values within any 6-month reporting period. Between November 21 and December 7, 2005, the 3-hour average smelt dissolving tank scrubber recirculation flow rates were below the range of values established in 40 C.F.R. §63.864(j), indicating 17 days of exceedances of the smelt dissolving tank emission standard set forth in 40 C.F.R. §63.862(a)(1).

27. Failure to Comply with Emission Standard for Lime Kilns (40 C.F.R.

§63.862(a)(1)): Evergreen is required to comply with a particulate matter emissions standard for lime kilns of 0.064 gr/dscf corrected to 10 percent oxygen. On August 18, 2005, Evergreen conducted performance testing of the lime kiln. The results of this testing showed that emissions from the lime kiln were 0.21 gr/dscf. Evergreen has stated that it will not be able to comply with the Subpart

MM emission standard until it has commenced operation of an ESP, which Evergreen anticipates will be in April 2007.

FINDINGS OF VIOLATION

28. EPA finds that Evergreen has violated 40 C.F.R. §§63.9(b)(2) and 63.867(a)(1) by operating affected sources without having submitted a complete initial notification of compliance.
29. EPA finds that Evergreen has violated 40 C.F.R. §§63.7(b) and 63.9(e) by failing to notify EPA of performance testing conducted on the recovery furnace, the smelt dissolving tank and the lime kiln on the following dates: March 29-30, 2005; August 15 and 17-18, 2005; September 15, 2005; and October 19-20, 2005.
30. EPA finds that Evergreen has violated 40 C.F.R. §§63.7(a), 63.865, and 63.864(j)(1) by operating affected sources that were not source tested and for which parameter operating ranges were established within 180 days of Subpart MM's compliance date.
31. EPA finds that Evergreen has violated 40 C.F.R. §§63.7(g)(1) by failing to timely report to EPA the results of the tests conducted on March 29-30, 2005; August 15 and 17-18; September 15, 2005; and October 19-20, 2005.
32. EPA finds that Evergreen has violated 40 C.F.R. §§63.6(e)(3) and 63.866(a) by operating affected sources without a complete SSM plan.
33. EPA finds that Evergreen has violated 40 C.F.R. §63.864(e)(14) by failing to submit a request to EPA for alternative monitoring for the spray curtain used to control emissions from the smelt dissolving tank.

34. EPA finds that Evergreen has violated 40 C.F.R. §63.866(b) by failing to maintain records of corrective actions and violations with regard to the smelt dissolving tank and lime kiln.
35. EPA finds that Evergreen has violated 40 C.F.R. §§63.10(c) and 63.866(c)(3) by failing to maintain records of parameter monitoring data with regard to the smelt dissolving tank and lime kiln until November 21, 2005 and by failing to maintain adequate records of parameter monitoring data from November 21 through December 7, 2005.
36. EPA finds that Evergreen has violated 40 C.F.R. §63.866(b)(1) by failing to retain required records of parameter monitoring data for the smelt dissolving tank and lime kiln for a minimum of five years.
37. EPA finds that Evergreen has violated 40 C.F.R. §§63.10(e)(3) and 63.867(c) by failing to submit excess emission and CMS performance reports to EPA on or before April 30, 2005, July 30, 2005, October 30, 2005 and January 30, 2005.
38. EPA finds that Evergreen has violated 40 C.F.R. §63.862(a)(1) by exceeding the particulate matter emissions standard for smelt dissolving tanks from March 8, 2005 until September 15, 2005, based upon performance testing conducted in November and December 2004, and on March 30 – April 2, 2005. EPA also finds that Evergreen has violated 40 C.F.R. §63.862(a)(1) by exceeding the particulate matter emissions standard for smelt dissolving tanks from November 21 through December 7, 2005, based upon parametric monitoring conducted between November 21 – December 6, 2005.

39. EPA finds that Evergreen is in violation of 40 C.F.R. §63.862(a)(1) by exceeding the particulate matter emissions standard for lime kilns, based upon performance testing conducted on August 18, 2005.

NOTICE OF VIOLATION

Notice is given to Evergreen that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Evergreen has violated the Act and may be continuing to violate the Act, as set forth in the Finding of Violation.

ENFORCEMENT

Section 113(a)(3) of the Act provides that when any person has violated any requirement of section 112 of the Act or rule promulgated thereunder, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$32,500 per day of violation, or
- bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$32,500 per day for each violation.³

Furthermore, if a person knowingly violates section 112 of the Act or rule promulgated thereunder, EPA may request the Attorney General to commence a criminal action in accordance with section 113(c), pursuant to section 113(a)(3)(D).

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of

³ See also, Debt Collection Improvement Act of 1996; 40 C.F.R. Part 19; 69 Fed. Reg. 7121 (Feb. 13, 2004).

the Act may result in the Facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this FOV, the days of violation shall be presumed to include the date of this FOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

Evergreen may, upon request, confer with EPA. The conference will enable Evergreen to present evidence bearing on the Finding of Violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance. Evergreen has the right to be

represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this FOV. The request for a conference or other inquiries concerning the FOV should be made in writing to:

Kara Christenson
Office of Regional Counsel ORC-2
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3881

4/5/06
Date


Deborah Jordan, Director
Air Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

APR 06 2006

In Reply: AIR-5

Refer To: Docket No. R9-06-05

Mr. Lawrence Odle
Air Pollution Control Officer
North Coast Unified Air Quality Management District
2300 Myrtle Avenue
Eureka, CA 95501

Re: Evergreen Pulp, Inc.
Samoa, California

Dear Mr. Odle:

Enclosed for your information is a copy of a Finding of Violation ("FOV") issued by the United States Environmental Protection Agency ("EPA") to Evergreen Pulp, Inc. ("Evergreen"), concerning the operation of its kraft pulp mill in Samoa, California ("the facility"). This FOV has been issued because the facility is in violation of the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills, 40 C.F.R. Part 63, Subpart MM, §§63.860-63.868 40 C.F.R. 63.

The FOV informs the facility that a conference on the matter may be arranged by making a request to this office within 10 working days after receipt of the FOV. If such a conference is held, you will be advised and your participation would be welcome.

If you have any questions concerning this Finding of Violation, please contact Cyntia Steiner, Air Enforcement Office, at (415) 947-4112.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Jordan for D.D.", written in dark ink.

Deborah Jordan
Director, Air Division

Enclosures



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REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

APR 06 2006

In Reply: AIR-5

Refer To: Docket No. R9-06-05

Mr. James Ryden
Chief, Compliance Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: Evergreen Pulp, Inc.
Samoa, California

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Deborah Jordan
Director, Air Division

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